

CERTIFICATION OF ENROLLMENT

ENGROSSED HOUSE BILL 1175

Chapter 209, Laws of 2019

66th Legislature
2019 Regular Session

HEALTH CARE CONSENT--INCAPACITATED PERSONS

EFFECTIVE DATE: July 28, 2019

Passed by the House February 14, 2019
Yeas 71 Nays 25

FRANK CHOPP

Speaker of the House of Representatives

Passed by the Senate April 15, 2019
Yeas 36 Nays 10

CYRUS HABIB

President of the Senate

Approved April 30, 2019 2:18 PM

JAY INSLEE

Governor of the State of Washington

CERTIFICATE

I, Bernard Dean, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED HOUSE BILL 1175** as passed by House of Representatives and the Senate on the dates hereon set forth.

BERNARD DEAN

Chief Clerk

FILED

May 1, 2019

**Secretary of State
State of Washington**

ENGROSSED HOUSE BILL 1175

Passed Legislature - 2019 Regular Session

State of Washington

66th Legislature

2019 Regular Session

By Representatives Kilduff, Irwin, Jenkins, Klippert, Valdez, and Ortiz-Self

Read first time 01/16/19. Referred to Committee on Civil Rights & Judiciary.

1 AN ACT Relating to authorization of health care decisions by an
2 individual or designated person; and amending RCW 7.70.065 and
3 70.122.030.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 7.70.065 and 2017 c 275 s 1 are each amended to read
6 as follows:

7 (1) Informed consent for health care for a patient who is not
8 competent, as defined in RCW 11.88.010(1)(e), to consent may be
9 obtained from a person authorized to consent on behalf of such
10 patient.

11 (a) Persons authorized to provide informed consent to health care
12 on behalf of a patient who is not competent to consent, based upon a
13 reason other than incapacity as defined in RCW 11.88.010(1)(d), shall
14 be a member of one of the following classes of persons in the
15 following order of priority:

16 (i) The appointed guardian of the patient, if any;

17 (ii) The individual, if any, to whom the patient has given a
18 durable power of attorney that encompasses the authority to make
19 health care decisions;

20 (iii) The patient's spouse or state registered domestic partner;

1 (iv) Children of the patient who are at least eighteen years of
2 age;

3 (v) Parents of the patient; (~~and~~)

4 (vi) Adult brothers and sisters of the patient;

5 (vii) Adult grandchildren of the patient who are familiar with
6 the patient;

7 (viii) Adult nieces and nephews of the patient who are familiar
8 with the patient;

9 (ix) Adult aunts and uncles of the patient who are familiar with
10 the patient; and

11 (x) (A) An adult who:

12 (I) Has exhibited special care and concern for the patient;

13 (II) Is familiar with the patient's personal values;

14 (III) Is reasonably available to make health care decisions;

15 (IV) Is not any of the following: A physician to the patient or
16 an employee of the physician; the owner, administrator, or employee
17 of a health care facility, nursing home, or long-term care facility
18 where the patient resides or receives care; or a person who receives
19 compensation to provide care to the patient; and

20 (V) Provides a declaration under (a) (x) (B) of this subsection.

21 (B) An adult who meets the requirements of (a) (x) (A) of this
22 subsection shall provide a declaration, which is effective for up to
23 six months from the date of the declaration, signed and dated under
24 penalty of perjury pursuant to RCW 9A.72.085, that recites facts and
25 circumstances demonstrating that he or she is familiar with the
26 patient and that he or she:

27 (I) Meets the requirements of (a) (x) (A) of this subsection;

28 (II) Is a close friend of the patient;

29 (III) Is willing and able to become involved in the patient's
30 health care;

31 (IV) Has maintained such regular contact with the patient as to
32 be familiar with the patient's activities, health, personal values,
33 and morals; and

34 (V) Is not aware of a person in a higher priority class willing
35 and able to provide informed consent to health care on behalf of the
36 patient.

37 (C) A health care provider may, but is not required to, rely on a
38 declaration provided under (a) (x) (B) of this subsection. The health
39 care provider or health care facility where services are rendered is
40 immune from suit in any action, civil or criminal, or from

1 professional or other disciplinary action when such reliance is based
2 on a declaration provided in compliance with (a)(x)(B) of this
3 subsection.

4 (b) If the health care provider seeking informed consent for
5 proposed health care of the patient who is not competent to consent
6 under RCW 11.88.010(1)(e), other than a person determined to be
7 incapacitated because he or she is under the age of majority and who
8 is not otherwise authorized to provide informed consent, makes
9 reasonable efforts to locate and secure authorization from a
10 competent person in the first or succeeding class and finds no such
11 person available, authorization may be given by any person in the
12 next class in the order of descending priority. However, no person
13 under this section may provide informed consent to health care:

14 (i) If a person of higher priority under this section has refused
15 to give such authorization; or

16 (ii) If there are two or more individuals in the same class and
17 the decision is not unanimous among all available members of that
18 class.

19 (c) Before any person authorized to provide informed consent on
20 behalf of a patient not competent to consent under RCW
21 11.88.010(1)(e), other than a person determined to be incapacitated
22 because he or she is under the age of majority and who is not
23 otherwise authorized to provide informed consent, exercises that
24 authority, the person must first determine in good faith that that
25 patient, if competent, would consent to the proposed health care. If
26 such a determination cannot be made, the decision to consent to the
27 proposed health care may be made only after determining that the
28 proposed health care is in the patient's best interests.

29 (d) No rights under Washington's death with dignity act, chapter
30 70.245 RCW, may be exercised through a person authorized to provide
31 informed consent to health care on behalf of a patient not competent
32 to consent under RCW 11.88.010(1)(e).

33 (2) Informed consent for health care, including mental health
34 care, for a patient who is not competent, as defined in RCW
35 11.88.010(1)(e), because he or she is under the age of majority and
36 who is not otherwise authorized to provide informed consent, may be
37 obtained from a person authorized to consent on behalf of such a
38 patient.

39 (a) Persons authorized to provide informed consent to health
40 care, including mental health care, on behalf of a patient who is

1 incapacitated, as defined in RCW 11.88.010(1)(e), because he or she
2 is under the age of majority and who is not otherwise authorized to
3 provide informed consent, shall be a member of one of the following
4 classes of persons in the following order of priority:

5 (i) The appointed guardian, or legal custodian authorized
6 pursuant to Title 26 RCW, of the minor patient, if any;

7 (ii) A person authorized by the court to consent to medical care
8 for a child in out-of-home placement pursuant to chapter 13.32A or
9 13.34 RCW, if any;

10 (iii) Parents of the minor patient;

11 (iv) The individual, if any, to whom the minor's parent has given
12 a signed authorization to make health care decisions for the minor
13 patient; and

14 (v) A competent adult representing himself or herself to be a
15 relative responsible for the health care of such minor patient or a
16 competent adult who has signed and dated a declaration under penalty
17 of perjury pursuant to RCW 9A.72.085 stating that the adult person is
18 a relative responsible for the health care of the minor patient. Such
19 declaration shall be effective for up to six months from the date of
20 the declaration.

21 (b)(i) Informed consent for health care on behalf of a patient
22 who is incapacitated, as defined in RCW 11.88.010(1)(e), because he
23 or she is under the age of majority and who is not otherwise
24 authorized to provide informed consent may be obtained from a school
25 nurse, school counselor, or homeless student liaison when:

26 (A) Consent is necessary for nonemergency, outpatient, primary
27 care services, including physical examinations, vision examinations
28 and eyeglasses, dental examinations, hearing examinations and hearing
29 aids, immunizations, treatments for illnesses and conditions, and
30 routine follow-up care customarily provided by a health care provider
31 in an outpatient setting, excluding elective surgeries;

32 (B) The minor patient meets the definition of a "homeless child
33 or youth" under the federal McKinney-Vento homeless education
34 assistance improvements act of 2001, P.L. 107-110, January 8, 2002,
35 115 Stat. 2005; and

36 (C) The minor patient is not under the supervision or control of
37 a parent, custodian, or legal guardian, and is not in the care and
38 custody of the department of social and health services.

39 (ii) A person authorized to consent to care under this subsection
40 (2)(b) and the person's employing school or school district are not

1 subject to administrative sanctions or civil damages resulting from
2 the consent or nonconsent for care, any care, or payment for any
3 care, rendered pursuant to this section. Nothing in this section
4 prevents a health care facility or a health care provider from
5 seeking reimbursement from other sources for care provided to a minor
6 patient under this subsection (2)(b).

7 (iii) Upon request by a health care facility or a health care
8 provider, a person authorized to consent to care under this
9 subsection (2)(b) must provide to the person rendering care a
10 declaration signed and dated under penalty of perjury pursuant to RCW
11 9A.72.085 stating that the person is a school nurse, school
12 counselor, or homeless student liaison and that the minor patient
13 meets the elements under (b)(i) of this subsection. The declaration
14 must also include written notice of the exemption from liability
15 under (b)(ii) of this subsection.

16 (c) A health care provider may, but is not required to, rely on
17 the representations or declaration of a person claiming to be a
18 relative responsible for the care of the minor patient, under (a)(v)
19 of this subsection, or a person claiming to be authorized to consent
20 to the health care of the minor patient under (b) of this subsection,
21 if the health care provider does not have actual notice of the
22 falsity of any of the statements made by the person claiming to be a
23 relative responsible for the health care of the minor patient, or
24 person claiming to be authorized to consent to the health care of the
25 minor patient.

26 (d) A health care facility or a health care provider may, in its
27 discretion, require documentation of a person's claimed status as
28 being a relative responsible for the health care of the minor
29 patient, or a person claiming to be authorized to consent to the
30 health care of the minor patient under (b) of this subsection.
31 However, there is no obligation to require such documentation.

32 (e) The health care provider or health care facility where
33 services are rendered shall be immune from suit in any action, civil
34 or criminal, or from professional or other disciplinary action when
35 such reliance is based on a declaration signed under penalty of
36 perjury pursuant to RCW 9A.72.085 stating that the adult person is a
37 relative responsible for the health care of the minor patient under
38 (a)(v) of this subsection, or a person claiming to be authorized to
39 consent to the health care of the minor patient under (b) of this
40 subsection.

1 (3) For the purposes of this section, "health care," "health care
2 provider," and "health care facility" shall be defined as established
3 in RCW 70.02.010.

4 (4) A person who knowingly provides a false declaration under
5 this section shall be subject to criminal penalties under chapter
6 9A.72 RCW.

7 **Sec. 2.** RCW 70.122.030 and 1992 c 98 s 3 are each amended to
8 read as follows:

9 (1) Any adult person may execute a directive directing the
10 withholding or withdrawal of life-sustaining treatment in a terminal
11 condition or permanent unconscious condition. The directive shall be
12 signed by the declarer and acknowledged before a notary public or
13 other individual authorized by law to take acknowledgments or signed
14 by the declarer in the presence of two witnesses not related to the
15 declarer by blood or marriage and who would not be entitled to any
16 portion of the estate of the declarer upon declarer's decease under
17 any will of the declarer or codicil thereto then existing or, at the
18 time of the directive, by operation of law then existing. In
19 addition, a witness to a directive shall not be the attending
20 physician, an employee of the attending physician or a health
21 facility in which the declarer is a patient, or any person who has a
22 claim against any portion of the estate of the declarer upon
23 declarer's decease at the time of the execution of the directive. The
24 directive, or a copy thereof, shall be made part of the patient's
25 medical records retained by the attending physician, a copy of which
26 shall be forwarded by the custodian of the records to the health
27 facility when the withholding or withdrawal of life-support treatment
28 is contemplated. The directive may be in the following form and may
29 include a notarial certificate for an acknowledgment in an individual
30 capacity in short form as permitted by state law, but in addition may
31 include other specific directions:

32 Health Care Directive

33 Directive made this day of (month, year).

34 I, having the capacity to make health care decisions,
35 willfully, and voluntarily make known my desire that my dying shall
36 not be artificially prolonged under the circumstances set forth
37 below, and do hereby declare that:

1 (a) If at any time I should be diagnosed in writing to be in a
2 terminal condition by the attending physician, or in a permanent
3 unconscious condition by two physicians, and where the application of
4 life-sustaining treatment would serve only to artificially prolong
5 the process of my dying, I direct that such treatment be withheld or
6 withdrawn, and that I be permitted to die naturally. I understand by
7 using this form that a terminal condition means an incurable and
8 irreversible condition caused by injury, disease, or illness, that
9 would within reasonable medical judgment cause death within a
10 reasonable period of time in accordance with accepted medical
11 standards, and where the application of life-sustaining treatment
12 would serve only to prolong the process of dying. I further
13 understand in using this form that a permanent unconscious condition
14 means an incurable and irreversible condition in which I am medically
15 assessed within reasonable medical judgment as having no reasonable
16 probability of recovery from an irreversible coma or a persistent
17 vegetative state.

18 (b) In the absence of my ability to give directions regarding the
19 use of such life-sustaining treatment, it is my intention that this
20 directive shall be honored by my family and physician(s) as the final
21 expression of my legal right to refuse medical or surgical treatment
22 and I accept the consequences of such refusal. If another person is
23 appointed to make these decisions for me, whether through a durable
24 power of attorney or otherwise, I request that the person be guided
25 by this directive and any other clear expressions of my desires.

26 (c) If I am diagnosed to be in a terminal condition or in a
27 permanent unconscious condition (check one):

28 I DO want to have artificially provided nutrition and hydration.

29 I DO NOT want to have artificially provided nutrition and
30 hydration.

31 (d) If I have been diagnosed as pregnant and that diagnosis is
32 known to my physician, this directive shall have no force or effect
33 during the course of my pregnancy.

34 (e) I understand the full import of this directive and I am
35 emotionally and mentally capable to make the health care decisions
36 contained in this directive.

37 (f) I understand that before I sign this directive, I can add to
38 or delete from or otherwise change the wording of this directive and
39 that I may add to or delete from this directive at any time and that

1 any changes shall be consistent with Washington state law or federal
2 constitutional law to be legally valid.

3 (g) It is my wish that every part of this directive be fully
4 implemented. If for any reason any part is held invalid it is my wish
5 that the remainder of my directive be implemented.

6 Signed.....

7 City, County, and State of Residence

8 The declarer has been personally known to me or has provided proof of
9 identity and I believe him or her to be capable of making health care
10 decisions.

11 Witness.....

12 Witness.....

13 (2) Prior to withholding or withdrawing life-sustaining
14 treatment, the diagnosis of a terminal condition by the attending
15 physician or the diagnosis of a permanent unconscious state by two
16 physicians shall be entered in writing and made a permanent part of
17 the patient's medical records.

18 (3) A directive executed in another political jurisdiction is
19 valid to the extent permitted by Washington state law and federal
20 constitutional law.

Passed by the House February 14, 2019.
Passed by the Senate April 15, 2019.
Approved by the Governor April 30, 2019.
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